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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,521	01/07/2002	Robert John Ackroyd	550-306	5107

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04/21/2005

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EXAMINER

SHIFERAW, ELEN I A

ART UNIT

PAPER NUMBER

2136

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,521

Applicant(s)

ACKROYD, ROBERT JOHN

Examiner

Eleni A. Shiferaw

Art Unit

2136

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the office no longer accepts hand drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. It is not tangibly embodied, as it is only software per se. It is suggested that the claimed subject matter "A computer program product..." should be changed to "A program stored on a computer-readable medium..."

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 6-12, 15-21, and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Schertz et al. (Schertz, Pub. No.: US 2003/0084322 A1).

As per claims 1, 10, and 19, Schertz teaches a computer program product/method/apparatus for controlling a managing computer to manage malware protection within a computer network containing a plurality of network connected computers, said computer program product comprising:

receiving code operable to receive at said managing computer a plurality of log data messages identifying detection of malware by respective ones of said plurality of network connected computers (page 4 par. 0030 lines 9-10, and page 3 par. 0022 lines 8-10);

detecting code operable to detect from said plurality of log data messages received by said managing computer a pattern of malware detection across said plurality of network connected computers matching one or more predetermined trigger patterns (page 4 par. 0030 lines 9-21, page 3 par. 0021 lines 10-18, and par. 0023 lines 12-18); and

action performing code operable in response to detection of one or more predetermined trigger patterns to perform one or more predetermined anti-malware actions (page 4 par. 0030 lines 16-21, and page 3 par. 0020 lines 14-25).

As per claims 2, 11, and 20, Schertz teaches a computer program product/method/apparatus, wherein said plurality of network connected computers each have a malware scanner that serves to scan computer files to detected malware within said computer files (page 4 par. 0031 lines 1-3).

As per claims 3, 12, and 21, Schertz teaches a computer program product/method/apparatus, wherein said malware scanner uses malware definition data to identify malware to be detected (page 4 par. 0031 lines 1-3, and fig. 1 No. 16).

As per claims 6, 15, and 24, Schertz teaches a computer program product/method/apparatus, wherein said one or more predetermined anti-malware actions include isolating one or more of said network connected computers from other parts of said computer network (page 4 par. 0031 lines 17-24 and page 3 par. 0020 lines 14-17).

As per claims 7, 16, and 25, Schertz teaches a computer program product/method/apparatus, wherein said managing computer stores said plurality of log data messages within a database (fig. 2 No. 80A and 81A).

As per claims 8, 17, and 26, Schertz teaches a computer program product/method/apparatus, wherein said detecting code is operable to query said database (page 18 lines 7-10).

As per claims 9, 18, and 27, Schertz teaches a computer program product/method/apparatus, wherein said database includes data identifying one or more of:

malware protection mechanisms used by respective network connected computers (page 2 par. 0016 lines 14-17);

versions of malware protection computer programs used by respective network connected computers (page 4 par. 0031 lines 1-3, and fig. 1 No. 16);

versions of malware definition data used by respective network connected computers (page 4 par. 0031 lines 1-3, and fig. 1 No. 16); and

security settings of malware protection mechanisms used by respective network connected computers (page 2 par. 0016 lines 14-17).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4, 13, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schertz et al. (Schertz, Pub. No.: US 2003/0084322 A1) in view of Schnurer et al. (Schnurer, Patent Number: 5842002).

As per claims 4, 13, and 22, Schertz teaches all the subject matter as described above.

Schertz do not explicitly teach updating of malware definition data.

However Schnurer teaches a computer program product/method/apparatus, wherein said one or more predetermined anti-malware actions include forcing an update of malware definition data being used by one or more of said plurality of network connected computers (Schnurer col. 5 lines 16-19).

Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ the teachings of Schnurer within the system of Schertz because it would keep the detection device current (Schnurer col. 5 lines 16-19).

7. Claims 5, 14, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schertz et al. (Schertz, Pub. No.: US 2003/0084322 A1) in view of Chen et al. (Chen, Patent Number: 5,832,208).

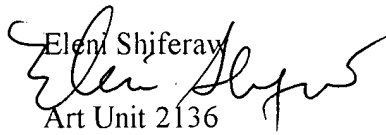
As per claims 5, 14, and 23, Schertz teaches all the subject matter as described above. Schertz does not explicitly teach altering the scanner setting when malware is detected. However Chen teaches a computer program product/method/apparatus, wherein said one or more predetermined anti-malware actions include altering at least one scanner setting of at least one malware scanner such that said malware scanner performs more thorough malware scanning (Chen Fig. 3 No. 260; performing more thorough virus scanning after virus is detected).


Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ the teachings of Chen within the system of Schertz because it would scan the entire email/data to detect more virus if any.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eleni A. Shiferaw whose telephone number is 571-272-3867. The examiner can normally be reached on Mon-Fri 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R. Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eleni Shiferaw

Art Unit 2136
April 13, 2005


4/15/05